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United States District Court
Southern District Of New York

MOUSSA DIARRA,

PLAINTIFF,

v.

CITY OF NEW YORK,
DEFENDANT.

) **FIRST AMENDED COMPLAINT**
)
) **CIVIL RIGHTS VIOLATION**
)
) **DEMAND FOR JURY TRIAL**
)
) **1. 42 U.S.C. § 1983 [FIFTH**
) **AMENDMENT: SELF INCRIMINATION]**
) **2. 42 U.S.C. 1983 [Equal Protection]**
) **3. New York Constitution, Art. I, §6**
) **4. New York Constitution, Art. I, §11**
) **5. FALSE IMPRISONMENT**

1 Plaintiff MOUSSA DIARRA avers as follows:
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4 **PRELIMINARY STATMENT**

5 1. Plaintiff brings this action seeking to reclaim injury from
6 discrimination under color of law in his arrest, investigation and
7 subsequent prosecution based on fictitious criminal complaint.
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11 2. PLAINTIFF MOUSSA DIARRA, is a naturalized US Citizen born
12 in the Ivory Coast. His race group is African. He arrived in the U.S. on
13 June 16, 1990.
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17 4. Mr. DIARRA was arrested at 7PM September 23, 2014 and
18 charged under P.L. 130.50(1), Criminal Sexual Act in the First Degree;
19 P.L 130.70(1), attempted sexual assault in the first degree, P.L
20 110/120.10(2)attempted assault in the second degree, and P.L.
21 120.05(3), assault in the second degree.
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26 5. Mr. DIARRA was arrested at the police station on September 23,
27 2014, and interviewed in the absence of a lawyer.
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3 6. DIARRA was subsequently indicted, indictment no: 04521-2014;
4 lower court number, 2014NY073285.
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7 7. The detectives involved in the investigation were Detective
8 LUKASZI SKOREZISKWI, Shield 7203 command MSVS and
9 detective KATIA JASMIN, shield 567 command MSVS.
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13 8. Mr. DIARRA, and his then wife TRAORE KADY who had
14 recently arrived from Ivory Coast at the time of incident. They got
15 married in January 2014.
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19 9. Subsequently information damaging to Mr. DIARRA's reputation
20 was published to the media (New York Daily News), and New
21 York Post: stated – *Man Circumcises wife after raping her: Cops*¹,
22 the source for this was noted as “Cops.” The article said: Mr.
23 DIARRA was from Africa where circumcision was a common
24 practice portraying the defendant as guilty of the crime accused.
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¹ Conley, Kristin. October 7, 2014.

1 This article was available for texting and tweeting in many
2 internet secondary outlets².
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5 10. The New York Daily News Article stated that: “MR.
6 DIARRA used a razor blade for his own direct sexual
7 gratification.”³ And that “...over 5 Million women are victims of
8 forced mutilation.”⁴ Further damaging Mr. Diarra’s reputation.
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12 11. MS. KADY TRAORE was examined on September 22, 2014
13 at Harlem Hospital by T. BIRDSALL and a social worker MS.
14 OUWSMANN.
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18 12. The medical reports did not evidence any sign of
19 circumcision or sexual assault.
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25 ² EXHIBIT A (Media: New York Post, New York Daily News, and shared internet
26 cache) .

27 ³ See EXHIBIT A.

28 ⁴ Ibid.

1 13. MR. DIARRA was tried and found not guilty on March 9,
2 2016.
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5 14. During trial, on cross examination with, a physician
6 assistant, Ms. T. BIRDAL (TRT219: 6-12), when asked whether
7 there was any physical cut, she reiterated what was already
8 evident in the medical report - NO.
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12 15. Mr. DIARRA was subsequently found not guilty after a jury
13 trial. No apology was ever given to him by the New York City
14 Police Department and New York City for this frivolous arrest,
15 investigation and prosecution, based on a fictitious complaint.
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20 16. MR. DIARRA seeks damages to his reputation, as well as
21 compensatory and punitive damages.
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25 17. MR. DIARRA spent four months 5 days, from September 23, 2014
26 to January 28, 2015 when he could not post bail.
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1 18. During MR. DIARRA's time in jail he was subject to all manner
2 of abuse: psychological and mental, because of the sexual nature of the
3 charges against him.
4

5 14. Mr. DIARRA was moved after arraignment from Central Jail to
6 Ricker's Island, where he awaited posting of bail.
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10 19. MR. DIARRA posted bail for \$10,000 which was put up by his
11 boss CARMIE ELMORE, on January 28th, 2015. For the four months
12 while at Riker's Island Mr. Diarra contemplated suicide, on at least one
13 occasion. This would have been done by inserting his head into the
14 retraining electric door.
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19 20. Defendants' conduct through New York City POLICE
20 DEPARTMENT arresting officers LUKASZI SKORZESWI and KATIA
21 JASMIN, and numerous investigators, caused enormous and
22 irreparable harm to MR. DIARRA's person and reputation. Defendant,
23 New York City, may continue to do the same to other plaintiffs
24 similarly situated based on such race discrimination.
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3 **JURISDICTION AND VENUE**
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5 21. This Court has subject matter jurisdiction over this civil rights
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7 action pursuant to 28 U.S.C. §§ 1331, 1338 (a) and 1338 (b), and under
8
9 its supplemental jurisdiction.
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11 22. This Court has personal jurisdiction over Defendant because; the
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13 seat of the court is within New York City.
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16 23. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(a)
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18 as a substantial part of the events or omissions giving rise to the
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20 claim occurred, and the DEFENDANTS and/or agents may be
21
22 found, in this judicial district.
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24

25 **PARTIES**
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27 24. PLAINTIFF MOUSSA DIARRA is a naturalized U.S. citizen who
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has resided in New York City for over thirty years.

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3 25. NEW YORK CITY is a city in the State of New York, where Mr.
4 DIARRA lives.
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7 **FIRST CAUSE OF ACTION**
8 **(42 U.S.C. 1983: FIFTH AMENDMENT: SELF**
9 **INCRIMINATION AND DUE PROCESS)**

10 (By plaintiff Against Defendants)

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12 20. Plaintiff incorporates herein by reference each and every
13 averment contained in paragraphs 1 through 19, inclusive.
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15 21. Through their conduct averred herein, Defendants have
16 infringed Plaintiff's SIXTH amendment (FREE FROM SELF
17 INCRIMINATION) by a course of conduct in which defendant was
18 interviewed without an attorney and subsequently tried.
19

20 22. Due process, (substantive right) was violated when defendant
21 was unable to comprehend proceedings due to language barriers and
22 police officers proceeded with interrogation without administration of
23 Miranda Rights and obtaining consent to custodial interview.
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1 23. Fifth Amendment is violated when defendant is interrogated
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3 without administering Miranda rights and that statement/conduct is
4 used against defendant. Mr. DIARRA was interrogated by officers
5 SKOREZISKWI and JASMIN, at 134 street, between 3rd and 2nd
6
7 avenue precinct in Harlem, outside the presence of a lawyer and not
8
9 consenting to said interview.
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11 24. Mr. DIARRA's lack of understanding of proceedings was then
12
13 used to build a criminal case against him. His right not to be a witness
14
15 against himself was taken away from him (substantive due process.).
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17 25. Police Officer SKOREZISKWI allegedly said during
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19 interrogation of Mr. DIARRA: "You have no rights in your country,
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21 what law are you talking about?" This was in a conversation regarding
22
23 trip to see blood at Classic Laundry to prove innocence, at 268-270 West
24
25 145 street, New York, NY 10039.
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1 24. Officer SKORZEWSKI has since been arrested on a separate
2
3 case involving an attempted rape victim originally from Seattle. He was
4 given one-year probation and transferred to Queens⁵.

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7 25. Defendants' acts through police officers as agents and
8 investigators as agents are willful, intentional and purposeful, in
9 disregard of and with indifference to Plaintiff's rights.

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13 26. As a direct and proximate result of said violation of Plaintiff's
14 rights, resulting in unnecessary criminal prosecution, investigation and
15 trial of plaintiff; Plaintiff is entitled to damages in an amount to be
16 proven at trial.

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20 **SECOND CAUSE OF ACTION**
21 **(42 U.S.C. 1983: EQUAL PROTECTION)**

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23 24. Plaintiff incorporates paragraphs 1-26, as fully set herein.
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⁵ New York Daily News, January 18, 2005.

1 25. Mr. DIARRA, as a black African was not treated similarly to a
2 white man during his arrest, investigation and subsequent prosecution.
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5 26. Medical Records, not evidencing any medical harm to victim
6 were ignored and prosecution was allowed to proceed despite a lack of
7 *primaefacie* evidence for the sexual assault.
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11 27. Equal Protection is violated when person (New York City)
12 treats members within a protected group (race) differently.
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16 **THIRD CAUSE OF ACTION**
17 **(VIOLATION OF NEW YORK CONSTITUTION: FIFTH**
18 **AMENDMENT)**

19 28. Plaintiff incorporates paragraphs 1-27, as fully set forth
20 herein.
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23 29. Plaintiff's Fifth Amendment under state New York
24 Constitution, NY Const. § 6, was violated because of defendant's course
25 of conduct; arrest, investigation and prosecution.
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3 **FOURTH CAUSE OF ACTION**
4 **(VIOLATION OF NEW YORK CONSTITUTION: EQUAL**
5 **PROTECTION)**

6 30. Plaintiff incorporates paragraphs 1-29, as if fully set forth
7 herein.

8 31. Defendant violated plaintiff's equal protection right under NY
9 Const. §11.
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12 **FIFTH CAUSE OF ACTION**
13 **(FALSE IMPRISONMENT)**

14 Plaintiff incorporates paragraphs 1-31, as fully set forth herein.
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16 32. As a direct (arrest) and indirect (prosecution) result of a false
17 instrument intentionally created by Officer Skorzewski on September
18 24, 2014. A day after the arrest. And in violation of New York City
19 Penal Law 210.45. Mr. Diarra was made to suffer pain of imprisonment
20 because he failed to produce \$10,000 bail bond following arraignment.
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22 33. Mr. Skorzewski doctored, lied and intentionally filled out a
23 complaint to create the illusion that Mr. Diarra had committed the
24 serious crime of *genital mutilation*. He (Skorzewski) further signed on
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1 the false written statement that he was aware that it was illegal to
2 create such a false written statement.
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4 34. Mr. Diarra was imprisoned/jailed at Rikers Island for four
5 months because he could not make bail as an indirect (but for) result of
6 this false written statement by Officer Skorzewski.
7

8 35. The nature of a crime determines the amount and manner of bail
9 at arraignment. In addition, the Criminal justice system is built on the
10 written submissions of arresting police officers, as to what they have
11 seen, heard and observed. High bail was a direct result of false written
12 statement created by Mr. Skorzewski, as it states grave nature of
13 fictitious crime of *genital mutilation*, as well as offering Mr. Diarra as a
14 sacrificial menace to society whose rights should be withdrawn.
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16 Preceding judge in criminal case, taking officer Skorzewski at his word;
17 and that Police Officers have no reason to lie; relied on the false written
18 statement to set appropriate bail and determine course of action,
19 including requesting Mr. Diarra's passport as a potential flight risk to
20 his place of birth Ivory Coast.
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1 34. In response to the filing of a false written statement, which the
2 District Attorney relied upon, prosecution was commenced and
3 concluded. At no time did Mr. Skorzewski retract his false written
4 statement. The narrative in the false written statement formed the
5 charging documents presented to the grand jury, as well as the tone and
6 legal strategy for Mr. Diarra's prosecution. See Exhibit F, DEF 14-15.
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11 35. Plaintiff is suffering irreparable injury from the discriminatory
12 arrest, imprisonment, investigation and trial, and will continue to
13 suffer such irreversible injury.
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19 36. Plaintiff are further entitled to their attorney fees and full cost
20 pursuant to 17 U.S.C. § 505 and otherwise according to law.
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23 37. As a direct and proximate result of foregoing acts and conduct,
24 Plaintiff has sustained and will continue to sustain substantial,
25 immediate, and irreparable injury, for which there is no adequate
26 remedy at law.
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7 WHEREFORE, Plaintiff prays for judgment against Defendant as
8 follows:
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- 10 1. For damages in such amount as may be found, or as
11 otherwise permitted by law.
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13 2. For plaintiff's attorney's fees, costs, and disbursement in
14 this action pursuant to 42 U.S.C. 1988 and other relevant
15 statutes; and
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17 3. For such other and further relief as the court may deem
18 just and proper.
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22 September 19th, 2017

23 */s/ Kissinger N. Sibanda*
24

25 By: ___/Kissinger N. Sibanda/_____
26

27 Attorney for Plaintiff
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DEMAND FOR JURY TRIAL

PLAINTIFF Moussa Diarra demands a trial by jury.

Date: September 19, 2017

KISSINGER N. SIBANDA
Attorney for PLAINTIFF

By: __/Kssinger N. Sibanda/_____
KISISNGER N. SIBANDA Esq
Attorney for Plaintiff